

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 36 Construction and A-E Subcontracting

Subject: 36.1 Construction Subcontracting

PURPOSE: This standard practice (SP) outlines the procedures to be followed in subcontracting for construction.

POLICY: Subcontracts for construction will be performed in accordance with the requirements of DEAR 970.5204-22.

SCOPE: This SP applies to all subcontracts for construction.

DEFINITIONS:

Construction	Construction is the construction, alteration, or repair (including dredging, excavating, decorating, and painting) of buildings, structures, or other real property.
Invitation for Bids (IFB)	An IFB is a form of solicitation using sealed-bid procedures for construction subcontracts.
Real Property	Real property is land, its permanently affixed buildings or other structures, its improvements, and its natural assets. The chief characteristics of real property are its immobility and tangibility. The term does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

PROCEDURES:

Construction Project Submission Requirements	<p>Requirements for construction must be submitted on a purchase request along with the following information or documentation:</p> <ul style="list-style-type: none">• One copy of the specifications and drawings for the project;• A current Davis-Bacon Act determination for any project expected to exceed \$2,000;• A suggested bidders list, if applicable, to supplement the bidders list maintained by Procurement;• Any other information or documentation considered necessary for the requirement, based on the nature or complexity of the project; and• A copy of the independent government estimate provided by Engineering prior to bid opening if the requirement exceeds \$100,000. <p><u>Laboratory-Specific Instructions:</u></p> <ul style="list-style-type: none">• At LLNL, Engineering is Plant Engineering• At LANL, Engineering is Facilities Planning and Delivery• At LBNL, Engineering is Facilities.
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Socioeconomic Considerations

Subcontracts of \$100,000 or Less — Construction subcontracts with an estimated value of \$100,000 or less should be reserved exclusively for small businesses when the conditions set forth in SP 19.3, Set-Asides, are met.

Subcontracts Exceeding \$100,000 — Subcontracts exceeding \$100,000 may be competed exclusively among small businesses when there is a reasonable expectation that bids competitive in terms of price, quality, and delivery will be obtained from two or more responsible small business firms.

Small Business Administration (SBA) 8(a) Program — Subcontracts of \$5 million or less may be awarded on a noncompetitive basis to firms certified as participants in the SBA's 8(a) program.

Small Purchase Procedures

Use of small purchase procedures (see SP 13.1, Small Purchase Procedures) should be considered for construction projects falling within the small purchase threshold.

Presolicitation Notification

A presolicitation notification may be distributed when it is considered appropriate in order to stimulate interest in a pending project.

These notices should be distributed sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders. The notices should include the following information:

- Solicitation number;
- Date of the notice;
- Date the solicitation is available;
- Requirement in terms of physical characteristics and an estimated price range (in no event will the statement of magnitude disclose the Laboratory's cost estimate);
- Standard industrial classification (SIC) code and small business size standard (see SP 19.3, Set-Asides);
- Project title and location;
- Bid restrictions, if any;
- Description of the proposed work in sufficient detail to disclose the nature and volume of work in terms of physical characteristics;
- Name of the procurement specialist; and
- Any amount to be charged for solicitation documents and how copies can be obtained.

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Solicitation Types

Construction is normally procured using sealed-bid procedures, including use of an IFB. Construction services may be procured through negotiation procedures when:

- Time does not permit the solicitation, submission, and evaluation of sealed bids;
- The award will not be made on the basis of price and price-related factors;
- It is necessary to conduct discussions with bidders about their bids; or
- There is no reasonable expectation of receiving more than one sealed bid.

Laboratory-Specific Instructions:

- At LLNL, the use of negotiation procedures requires procurement supervisor approval.

Pricing

Generally, firm fixed-price subcontracts are used to acquire construction and may be priced on:

- A lump-sum basis for performance of an entire project or defined parts of a project;
- A unit-price basis for a specified quantity of work units; or
- A combination of the above.

Lump-sum pricing is the preferred method, except when:

- Large quantities of work, such as grading, paving, building outside utilities, or preparing the site, are involved;
- Quantities of work, such as excavation, cannot be estimated with enough confidence to permit a lump-sum price without a substantial contingency;
- Estimated quantities of required work may change significantly during construction; or
- Bidders would have to expend unusual effort to develop adequate estimates.

IFB

An IFB must allow bidders sufficient time and opportunity to prepare and submit their bids. When determining the solicitation period, magnitude of the project, construction season, site inspection, amount of subcontracted work, examination of data pertaining to the work, and preparation of estimates based on the specifications and drawings, and other statutory requirements (such as the Stull Bill for LLNL and LBNL) must be considered.

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Special Instructions and Requirements — The IFB must include any special instructions or requirements that could affect the bid. These instructions and/or requirements may include:

- The requirement in terms of physical characteristics and an estimated price range (in no event will the statement of magnitude disclose the Laboratory's cost estimate);
- Any special qualifications or experience requirements that will be considered when determining the responsibility of bidders;
- The requirement for submission of a Small Business Subcontracting Plan and required reports for projects estimated to cost \$1 million or more (see SP 19.4, Subcontracting Plans);
- Any special instructions regarding bids, alternate bids, and criteria for award;
- The required performance period expressed in terms of the calendar days after notice to proceed;
- The date, time, and location for the delivery and opening of bids;
- The date, time, and location of the site visit;
- Any special environmental, health, and safety requirements;
- Any restrictions that apply to foreign nationals or permanent resident aliens working on Laboratory premises;
- Any general and site-specific training requirements; or
- Liquidated damages.

Liquidated Damages — Liquidated damages may be used only when:

- The time of performance is such an important factor that the Laboratory may reasonably expect to suffer actual damage if the performance of work is delinquent and
- The extent or amount of damage is difficult or impossible to ascertain or prove.

The rate of liquidated damages used must be reasonable and considered on a case-by-case basis since any reference to probable actual damages may be held to be a penalty, and therefore, unenforceable. If liquidated damages are included in the subcontract, the file must explain the basis of liquidated damages. See SP 11.4, Liquidated Damages, for further instructions.

Site Inspection and Examination of Data — An opportunity for all bidders to inspect the work site and examine all data pertaining to the project must be provided. All information must

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be made available in the same manner to all bidders. A record of the identity and affiliation of all subcontractors' representatives who inspect the site or examine the data should be included in the subcontract file.

Receipt and Opening of Bids

All bids, including bid modifications, received at the location specified in the IFB before the time set for opening will be kept secured and unopened. The bids will be opened and publicly read at the time set for opening of bids, as stated in the invitation.

Late Bids or Late Modification of Bids — Bids received in the office designated in the IFB after the exact time set for opening are considered late bids. A late bid, late modification of a bid, or withdrawal of a bid will not be considered for award unless the bid is received before the subcontract is awarded and the bid was sent:

- By registered or certified mail not later than five calendar days before the specified date for receipt of bids;
- By mail (or telegram or facsimile, if authorized in the IFB) and the Laboratory determines that the late receipt was due solely to mishandling by the Laboratory after receipt at the Laboratory; or
- By U.S. Postal Service Express Mail Next Day Service — Post Office to Addressee, not later than 5:00 p.m. at the place of mailing, two working days (excluding weekends and federal holidays) before the date specified for receipt of bids.

Note: In no case will a hand-carried bid or modification to a bid be accepted after the time set for bid opening.

Subcontract Award

After bids are publicly opened, an award will be made with reasonable promptness to the low responsive and responsible bidder whose bid conforms to the requirements of the IFB. The successful bidder will be notified in writing in an award letter that:

- Identifies the IFB under which the bid was submitted;
- States the amount of the award;
- Advises the subcontractor to promptly execute any required payment and performance bonds and submit them to the procurement specialist; and
- Specifies the subcontract performance period.

Prevention of Conflict of Interest

To avoid a conflict of interest, the following relationships must not be established for any subcontract(s) awarded by the Laboratory involving the same firm or affiliated companies:

- Subcontracts for construction shall not be awarded to the A-E firm or an affiliate that prepared the design, except for turnkey or design-build subcontracts for a pre-engineered building in

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which the subcontractor assumes all liability for defects in design and construction and consequential damages.

- Award shall not be made for both a cost-reimbursement subcontract and a fixed-price subcontract for construction or A-E services or any combination thereof to the same firm when the subcontracts will be performed at the same site.
- The construction subcontractor or an affiliate shall not be employed to inspect the subcontractor's work. The working relationship of the construction subcontractor and the subcontractor inspecting the work and the authority of the inspector must be clearly defined.

Notice to Proceed

Normally before beginning work or issuing a Notice to Proceed (NTP), a pre-construction conference is scheduled and held with the subcontractor to discuss the requirements of the subcontract. Particular emphasis should be placed on the labor standards provisions (see SP 22.4, Construction Labor Standards); environmental, health, and safety requirements (see SP 23.1, Environment, Safety, and Health); submittals; construction schedule; excavation permits; differing sites; insurance (see SP 28.2, Insurance and Indemnification); and change orders.

The NTP will be issued in writing to the subcontractor after the following have been completed:

- Receipt/notification from the requester that the site is available;
- Receipt and verification of the signed subcontract;
- Receipt and verification of performance and payment bonds;
- Receipt and approval of the subcontractor's safety plan; and
- Pre-construction meeting.

The NTP must state the subcontract number, the effective date of the NTP, and the performance period for the subcontract.

Subcontract Administration

For a discussion on the general requirements of subcontract administration, see SP 42.1, Subcontract Administration — General.

Administration of Labor Standards — The subcontractor is required to submit weekly certified payrolls for verification of compliance with labor laws applicable to construction. See SP 22.4, Construction Labor Standards.

Progress Payments — Progress payments may be made on the basis of a breakdown of the subcontract price against the expected progress schedule, subject to retention of 10% of the amount. The subcontractor will make requests for progress payments by submitting invoices that detail the portion of the job that has been completed. Before authorizing payment, confirmation of the progress made must be obtained from

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Engineering. Instead of withholding a percentage of the subcontractor's progress payment, the subcontractor may deposit securities in the amount of the required retention into an escrow account. The accumulated retainage will be released to the subcontractor after completion and final acceptance of the subcontracted work.

Note: Progress payments, as used herein, are not the same as those prescribed in SP 32.2, Progress Payments.

Modifications — Fixed-price modifications will generally be used to acquire additional in-scope construction that was not contemplated at the time of award of the subcontract or to change work within the original scope. Change proposals may be requested by the procurement specialist or submitted by the subcontractor as a proposal for a changed condition. The proposal must contain a price breakdown in sufficient detail to permit analysis of all material, labor, equipment, lower-tier subcontracts, overhead, and profit, and must cover all work involved in the modification, whether such work was deleted, added, or changed. Any amounts for lower-tier subcontractors must be supported by a similar price breakdown. A request for a time extension must be supported by a justification. Any impact to the schedule must be substantiated by the subcontractor with a new schedule detailing the impact of the modification on the schedule. The proposal must include costs and additional time requirements, if any, arising from the necessary, reasonable, and foreseeable effect the modification has on unchanged work.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist must:

- Ensure that construction subcontracts with an estimated value of \$100,000 or less are reserved for small businesses when the conditions of SP 19.3, Set-Asides, are met;
- Avoid entering into a construction subcontract which establishes any of the stipulated conflict of interest relationships discussed under Prevention of Conflict of Interest above.
- Consider using small purchase procedures for construction projects within the small purchase threshold;
- Distribute pre-solicitation notices sufficiently in advance of the IFB to stimulate the interest of the greatest number of prospective bidders;
- Provide sufficient time and opportunity for prospective bidders to prepare and submit their bids;
- Provide an opportunity for potential bidders to inspect the work site and examine all data pertaining to the project;
- Keep bids secure and unopened until the bid opening;

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- Handle late bids and modifications to bids according to the procedures outlined herein;
- When appropriate, hold a pre-construction conference with the subcontractor; and
- Issue an NTP to the subcontractor in writing when all post-award requirements have been completed.

REFERENCES: Prime Contract Clause 8.1, Contractor Purchasing System